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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 **JUN DAM,**

11 Plaintiff,

12 vs.

13 **MARK D. WALDRON, CHAPTER**
14 **7 TRUSTEE, PAMELA M. EGAN,**
15 **POTOMAC LAW GROUP, PLLC,**
16 **and GIGA WATT BANKRUPTCY**
17 **ESTATE**

18 Defendants.

Case No. 2:24-cv-00417-SAB

**TRUSTEE'S AND COUNSEL'S
MOTIONS TO DISMISS
COMPLAINT FOR (I) LACK
OF SUBJECT MATTER
JURISDICTION, (II) LACK OF
PERSONAL JURISDICTION
OVER THE "GIGA WATT
BANKRUPTCY ESTATE" AND
(III) FAILURE TO STATE A
CLAIM AGAINST THE "GIGA
WATT BANKRUPTCY
ESTATE"**

**3/7/2025
Without Oral Argument**

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23 MOTIONS TO DISMISS FOR
24 LACK OF SUBJECT MATTER
25 JURISDICTION, etc.

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Mark D. Waldron, as Chapter 7 Trustee in the bankruptcy case of Giga Watt, Inc. pending in the United States Bankruptcy Court for the Eastern District of Washington, Case No. 2:18-bk-03197-FPC and his counsel, Pamela M. Egan, and the Potomac Law Group, PLLC (collectively, “Counsel”), hereby move for an order dismissing the Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction over the action, pursuant to Rule 12(b)(2) for lack of personal jurisdiction over the “Giga Watt Bankruptcy Estate,” as lacking the capacity to be sued, and pursuant to Rule 12(b)(6) for failure to state a claim against the “Giga Watt Bankruptcy Estate,” as lacking the capacity to be sued.

This Motion is supported by the Declaration of Mark D. Waldron (“Waldron Decl.”), the Declaration of Pamela M. Egan (“Egan Decl.”), and the *Request for Judicial Notice in Support of Trustee’s and Counsel’s Motions to Dismiss Complaint for (i) Lack of Subject Matter Jurisdiction, (ii) Lack of Personal Jurisdiction Over the “Giga Watt Bankruptcy Estate” and (iii) Failure to State a Claim Against the “Giga Watt Bankruptcy Estate,”* filed herewith,¹ and by the arguments set forth below.

I. INTRODUCTION

Although Jun Dam has not served a summons in this action, the Trustee and Counsel hereby waive service and hereby appear in this action. Dam filed the

¹ References to documents listed in the Request for Judicial Notice are by RJN, followed by the bates stamped number. For example, RJN 1.

1 Complaint on December 13, 2024. He notified Counsel of this filing by email
2 delivered at 3:30 a.m. on January 9, 2025. Egan Decl., ¶ 6.

3 This Court lacks subject matter jurisdiction over the Complaint for three
4 reasons. First, the Complaint violates the Barton Doctrine because Dam failed to
5 obtain the Bankruptcy Court’s permission to sue the Trustee and Counsel. *Barton*
6 *v. Barbour*, 104 U.S. 126, 127 (1881); *In re Crown Vantage, Inc.*, 421 F.3d 963,
7 970 (9th Cir. 2005). Second, it seeks to control property of the bankruptcy estate
8 which lies within the Bankruptcy Court’s exclusive jurisdiction. 28 U.S.C.
9 § 1334(e); 28 U.S.C. § 157; L.Civ.R. 83.5(a). Third, it seeks relief from the
10 automatic stay which also lies in the exclusive core jurisdiction of the Bankruptcy
11 Court. 28 U.S.C. § 157(b)(2)(G); *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir.
12 2000) .

13 In addition, the Complaint fails to establish personal jurisdiction over and
14 fails to state claim against the “Giga Watt Bankruptcy Estate” because the Giga
15 Watt Bankruptcy Estate lacks the capacity to be sued. The Trustee, as the estate’s
16 representative, is the party with the capacity to be sued on behalf of the estate. 11
17 U.S.C. § 323.

18 Amending the Complaint cannot remedy the lack of subject matter
19 jurisdiction or the estate’s lack of capacity to be sued. Accordingly, amendment
20 would be futile.

21 Therefore, the Trustee and Counsel respectfully request that this Court
22 dismiss the Complaint, without leave to amend.

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25 JURISDICTION, etc. -- 2

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II. BACKGROUND

A. The Trustee and Counsel Are Court-Appointed and Court-Approved Professionals in the Giga Watt Bankruptcy Case

Defendant Mark Waldron is the duly-appointed Chapter 7 Trustee in the bankruptcy case of Giga Watt, Inc., pending in the United States Bankruptcy Court for the Eastern District of Washington, Case No. 2:18-bk-03197-FPC (the “Bankruptcy Case”). (RJN 1) *See also* Waldron Decl., ¶ 2. The Trustee retained PLG as bankruptcy counsel and special litigation counsel. Waldron Decl., ¶ 5. The Bankruptcy Court approved PLG’s employment pursuant to two orders. (RJN 2 and 34) Defendant Pamela Egan is a partner at PLG who has primary responsibility for representing the Trustee. Egan Decl., ¶ 5. Dam admits, as he must, that at all material times alleged in the Complaint, the Trustee and Counsel were administering the Giga Watt estate. (ECF No. 1 at 10:13-14; ECF No. 1 at 10:17-19)

B. Dam Did Not Obtain Bankruptcy Court Permission Before Commencing This Suit

The Complaint does not allege – and cannot allege – that the Bankruptcy Court granted Dam permission to commence this action.

[This Motion continues on the next page.]

C. The Complaint Arises from the Perkins Settlement as Approved by this Court and the Bankruptcy Court Pursuant to Final and Nonappealable Orders

The Complaint alleges that this Court's Order approving the Perkins settlement is unenforceable and that the Perkins settlement should be revised to provide that the estate's \$3 million share of the settlement should be paid to WTT Token holders in addition to the \$4.5 million that they received pursuant to this Court's Order approving the settlement, as set forth below.

The Complaint alleges three counts: (1) unjust enrichment, (2) constructive trust, and (3) fraud. It also asks for relief from the automatic stay to allow this action to proceed.

D. The Trustee, Perkins, and Dam Litigated Against Each Other

On November 18, 2020, the Trustee commenced an adversary proceeding against Perkins and others in the Bankruptcy Court on the estate's behalf, asserting claims arising from the collapse of the Giga Watt Project and alleging that Perkins had prematurely released the proceeds of the sale of WTT Tokens from its IOLTA trust account, referred to also as the "escrow." (RJN 3) Waldron Decl., ¶ 7.

On December 13, 2020, Dam commenced in this Court a putative class action on behalf of WTT Token holders against Perkins alleging claims arising from the same facts as the Trustee alleged in the bankruptcy case (the "Class Action"). (ECF No. 1-2) Like the Trustee, Dam alleged that Perkins had disbursed

1 approximately \$10.8 million in WTT Token sales proceeds out of step with
2 construction. (ECF No. 1-2 at ¶¶ 28, 29)

3 On June 18, 2021, the Trustee moved the Bankruptcy Court to find Dam in
4 contempt for violating the automatic stay by pursuing claims against Perkins that
5 belonged to the estate. Waldron Decl., ¶ 8. The Bankruptcy Court partially agreed
6 with the Trustee, finding that the first three claims for relief in the Class Action
7 were property of the estate over which the Trustee had exclusive standing (the
8 “Automatic Stay Order”). (ECF No. 1-7)

9 Dam appealed to this Court the Automatic Stay Order and the Court’s
10 subsequent injunction of the Class Action. Waldron Decl., ¶ 9. This Court
11 consolidated these appeals in *Dam v. Waldron*, Case No. 2:21-cv-00291 SAB (the
12 “Consolidated Appeal”). Dam dismissed the Consolidated Appeal with prejudice
13 pursuant to the Perkins settlement, as set forth below. (RJN 50 and 54)

14 **E. The Trustee, Perkins and Dam Settled Pursuant to Final and**
15 **Nonappealable Orders**

16 In July 2022, after extensive litigation in the Bankruptcy Court by the
17 Trustee against Perkins and Dam, and after full briefing on Dam’s appeals before
18 this Court, the parties agreed to mediation. Settlement negotiations lasted more
19 than a year. Waldron Decl., ¶ 10. In late 2023, the parties finally settled. *Id.* As the
20 Complaint alleges, “the Giga Watt bankruptcy estate, represented by the Trustee,
21 entered into a \$3 million settlement with Perkins Coie.” (ECF No. 1 at 14:2-4)

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1 **1. *Perkins Paid \$4.5 Million to the Class and \$3 Million to the***
2 ***Estate; the Class Released Perkins and the Giga Watt Estate***

3 Subject to court approval, Perkins agreed to pay the WTT Token settlement
4 class \$4.5 million (the “Class Action Settlement”) and to pay the estate \$3 million
5 (the “Trustee’s Settlement”) pursuant to two agreements. (ECF No. 1-3 and 1-5)
6 Both agreements were contingent on the other becoming effective and on court
7 approval. (ECF No. 1-3 at 30:22-26 and 32:1-12; ECF No. 1-5 at 10, ¶¶ III.G.1 and
8 G.2)

9 The Class Action Settlement contains an express release (the “Release”) by
10 “each and every Releasing Party” (defined as Class Members, ECF No. 1-3 at
11 13:18-19) “by order of this Court” (ECF NO. 1-3 at 28:20-21) “of any Released
12 Claim against any Released Party.” (ECF No. 1-3 at 28:22-23) Released Party
13 includes, “the Giga Watt Estate, Mark D. Waldron as Chapter 7 Trustee of the
14 Giga Watt Estate, and agents and attorneys of the Giga Watt Estate.” (ECF No. 1-3
15 at 13:12-17. “Released Claims” means “all . . . claims . . . including . . . equitable
16 relief . . . that arise from or related to the facts giving rise to this [Class] Action.”
17 (ECF No. 1-3 at 13:7-11)The Trustee would not have agreed to the Perkins
18 settlement without this Release. Waldron Decl., ¶ 12.

19 The Bankruptcy Court approved the Trustee’s Settlement on October 5,
20 2023. (RJN 35) It held that the settlement was “fair and equitable.” (RJN 42) Only
21 one party – not Dam – objected. Waldron Decl., ¶ 13. At the Trustee’s request, the
22 Bankruptcy Court also granted limited relief from the stay on November 21, 2023

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1 to allow the Class Action Settlement to move forward. (RJN 45) Waldron Decl.,
2 ¶ 14.

3 This Court granted final approval of the Class Action Settlement on May 23,
4 2024. (ECF No. 1-4) It found that the Class Action Settlement was “fair,
5 reasonable, and adequate.” (ECF No. 1-4 at 3:22) The Class Action Settlement
6 gave WTT Token holders the right to opt out of the settlement. (ECF No. 1-3 at
7 27-28) No WTT Token holders, including Dam, opted out of the Class Action
8 Settlement. (RJN 48) And no one objected. *Id.*

9 **2. *Dam Dismissed His Appeal of the Automatic Stay Order and***
10 ***Preliminary Injunction With Prejudice Pursuant to the Perkins***
11 ***Settlement and This Court’s Final and Nonappealable Order***

12 Both the Class Action Settlement and the Trustee’s Settlement were
13 conditioned on the dismissal of Dam’s Consolidated Appeal of the Automatic Stay
14 Order and preliminary injunction which had stayed and enjoined the Class Action.
15 (ECF No. 1-3 at 30:10-21; ECF No. 1-5 at 10, ¶ III.G.3) In compliance with this
16 necessary condition to the Perkins settlement, Dam and the Trustee stipulated to
17 the dismissal of the Consolidated Appeal with prejudice on July 2, 2024. (RJN 50)
18 Waldron Decl., ¶ 15. On August 2, 2024, this Court dismissed the Consolidated
19 Appeal with prejudice. (RJN 54) The Trustee would not have agreed to the Perkins
20 Settlement without the condition of dismissal of the Consolidated Appeal. Waldron
21 Decl., ¶¶ 12, 15.

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1 Perkins paid \$3 million to the estate pursuant to the settlement on or about
2 July 29, 2024. Waldron Decl., ¶ 16.

3 **F. The Complaint Alleges That the Automatic Stay Order, Whose Appeal**
4 **Dam Dismissed With Prejudice, Was Wrongly Decided and That This**
5 **Court’s Final and Nonappealable Order Releasing the Giga Watt**
6 **Estate, the Trustee and Counsel Is Unenforceable**

7 The Complaint alleges that the \$3 million that Perkins paid to the Giga Watt
8 estate pursuant to the settlement was “intended for the Plaintiff,” Jun Dam. (ECF
9 No. 1 at 2:2) But, due to the Bankruptcy Court’s “erroneous ruling” in the
10 Automatic Stay Order, this payment was made to the estate. (ECF No. 1 at 15:3-9)
11 This “misapplication of the automatic stay” caused the WTT token holders to
12 receive less than they should have received. (ECF No. 1 at 2:10)

13 Referring to the Automatic Stay Order, the Complaint further alleges that
14 “misrepresentations made by Trustee Waldron and his counsel Egan . . . led to the
15 bankruptcy court’s erroneous ruling” (ECF No. 1 at 2:7-9) “The Trustee and
16 Egan misled the [bankruptcy] court by portraying the estate as having suffered
17 harm from the premature release of escrow funds [by Perkins].” (ECF No. 1 at
18 30:5-6) It alleges that “[t]he Trustee and Egan concealed critical facts, such as the
19 **estate’s lack of standing** and that the token holders were the rightful beneficiaries
20 of the [Perkins] escrow.” (Emphasis in original.) (ECF No. 1 at 31:5-6)

21 The Complaint does not refer to Dam’s stipulated dismissal of his appeal of
22 the Automatic Stay Order pursuant to the Perkins settlement nor does it refer to

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1 this Court's Order dismissing that appeal with prejudice at Dam's request pursuant
2 to the Perkins settlement.

3 The Complaint further alleges that the Release, approved by this Court, is
4 unenforceable. (ECF No. 1 at 15:10-17, 43:17-19, 44-50)

5 III. LEGAL STANDARD

6 A. Challenging Subject Matter Jurisdiction Under Rule 12(b)(1)

7 A challenge to subject matter jurisdiction pursuant to Federal Rule of Civil
8 Procedure 12(b)(1) may be facial or factual. *White v. Lee*, 227 F.3d 1214, 1242
9 (9th Cir. 2000). This Motion makes a factual challenge. On a factual challenge, the
10 court may "look beyond the complaint to matters of public record" and "need not
11 presume the truthfulness of the plaintiffs' allegations." *White*, 227 F.3d at 1242
12 (citation omitted); *Eggers v. Healing Lodge of the Seven Nations*, No. 2:24-CV-
13 00078-SAB, 2024 WL 4629114, at *1 (E.D. Wash. Oct. 30, 2024).

14 "Plaintiff bears the burden of proving the existence of such jurisdiction
15 when considering a Rule 12(b)(1) motion." *Bourg v. United States*, No. 2:23-CV-
16 00348-SAB, 2024 WL 4778024, at *2 (E.D. Wash. Nov. 13, 2024). A district court
17 must dismiss the action if it determines that it lacks subject matter jurisdiction over
18 the dispute. Fed.R.Civ.P. 12(h)(3).

19 B. Challenging Capacity of the "Giga Watt Bankruptcy Estate" to Be Sued

20 When a party's lack of capacity to be sued appears on the face of a
21 complaint, as is the case here regarding the "Giga Watt Bankruptcy Estate," a
22 motion to dismiss that named party is appropriate. Courts dismiss these complaints

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1 under either Rule 12(b)(2) for lack of personal jurisdiction or Rule 12(b)(6) for
2 failure to state a claim.

3 Rule 12(b) does not specifically authorize a motion to dismiss based on a
4 lack of capacity to be sued. “However, federal courts . . . traditionally have
5 entertained certain pre-answer motions that are not expressly provided for by the
6 rules or by statutes including motions raising a lack of capacity to sue or be sued.”
7 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §
8 1360 (3rd ed. 2004). The majority of reported decisions dismiss such complaints
9 under Rule 12(b)(6). However, some dismiss under Rule 12(b)(2). *Compare*
10 *Carroll Shelby Licensing, Inc. v. Tango Classic Autos, Inc.*, No. CV 15-06264 SJO
11 (KSx), 2015 WL 12765632, at *2-3 (C.D. Cal. Dec. 10, 2015) (granting motion to
12 dismiss under Fed.R.Civ P. 12(b)(2) because court lacked personal jurisdiction
13 over dissolved-corporation defendant that no longer had capacity to be sued);
14 *Copeland v. Morgan Stanley Cap. Tr.*, No. CV 23-3536-AB (JPR), 2024 WL
15 4797226, at *1 (C.D. Cal. Aug. 29, 2024), *report and recommendation adopted*,
16 No. CV 23-3536-AB (JPR), 2024 WL 4375737 (C.D. Cal. Oct. 1, 2024)
17 (dismissing case against non-jural entity for lack of personal jurisdiction) *with Doe*
18 *v. Mckesson*, 945 F.3d 818 (5th Cir. 2019), *cert. granted, judgment vacated on*
19 *other grounds*, 141 S. Ct. 48 (2020) (dismissing lawsuit against Black Lives Matter
20 for lack of capacity to be sued; applying Rule 12(b)(6)),; *Klebanow v. N.Y.*
21 *Produce Exchange*, 344 F.2d 294, 296 n.1 (2nd Cir. 1965) (“Although the defense
22 of lack of capacity is not expressly mentioned in [Federal Rule of Civil Procedure]

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12(b), the practice has grown up of examining it by a 12(b)(6) motion when the defect appears upon the face of the complaint.”); *Jordan v. Grace Living Centers*, 2020 WL 130147, *1 (W.D. Okla. 2020) (“Because Grace Living Centers is a trade name and does not have a legal existence under Oklahoma law separate and distinct from Defendant Amity Care, L.L.C., Plaintiff cannot state a plausible claim for relief against it. Accordingly, the Court finds that Grace Living Centers should be dismissed from the present action.”); *Farina Focaccia & Cucina Italiana, LLC v. 700 Valencia St. LLC*, 2015 WL 4932640, *5 (N.D. Cal. 2015) (“[T]he ‘lack of capacity to sue’ defense is one of legal insufficiency, and a claim made by or against a party that lacks the capacity to sue or be sued should be dismissed under Rule 12(b)(6) for failure to state a claim ‘upon which relief can be granted.’”); *Coates v. Brazoria County Texas*, 894 F. Supp. 2d 966, 968–69 (S.D. Tex. 2012) (after noting that “[w]hether a party has the capacity to sue or be sued is a legal question that may be decided at the Rule 12 stage,” the court granted the defendant’s motion to dismiss under Rule 12(b)(6) because the defendant county lacked the capacity to be sued under Texas law). This Motion seeks dismissal of the “Giga Watt Bankruptcy Estate” under both Rule 12(b)(2) and Rule 12(b)(6).

1. Standard Under Rule 12(b)(2)

At the pre-discovery stage of litigation on a Rule 12(b)(2) motion, the court accepts as true the jurisdiction-related facts in the complaint. *Pacific Atlantic Trading Co., Inc. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir. 1985). When the court is asked to rely only on written materials, as here, “dismissal is

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1 appropriate only if the plaintiff has not made a *prima facie* showing of personal
2 jurisdiction.” *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
3 1996), *opinion supplemented in unpublished opinion*, 95 F.3d 1156 (9th Cir.
4 1996).

5 **2. Standard Under Rule 12(b)(6)**

6 “To survive a motion to dismiss, a complaint must contain sufficient factual
7 matter, accepted as true, to state a claim to relief that is plausible on its face.”
8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *citing Bell Atlantic Corp. v. Twombly*,
9 550 U.S. 544, 570 (1995). A document filed *pro se* is “liberally construed,” and a
10 *pro se* complaint, “however inartfully pleaded, must be held to less stringent
11 standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S.
12 89, 94 (2007) (*quoting W.J. Estelle, v. Gamble*, 429 U.S. 97, 106 (1976)); *Cf.*
13 Fed.R.Civ.P. 8(e) (“pleadings must be construed so as to do justice”).

14 A plausible claim exists when a plaintiff pleads sufficient facts allowing the
15 court to reasonably infer that the defendant is liable for the misconduct alleged.
16 *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a probability
17 requirement, but it asks for more than a sheer possibility that a defendant has acted
18 unlawfully.” *Iqbal*, 556 U.S. at 678. *See also Order Affirming the Bankruptcy*
19 *Court’s Order Granting Appellees’ Motion to Dismiss*, filed in this Court, *Dam v.*
20 *Waldron*, Case No. 2:20-cv-00351-SAB, ECF No. 15 (applying the plausibility
21 standard in upholding the Bankruptcy Court’s order dismissing Dam’s first
22 complaint against the Trustee and Counsel for failure to state a claim).

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1 A district court may consider all materials submitted as part of the complaint
2 including exhibits and documents to which the complaint specifically refers and
3 whose authenticity is not questioned even if they are not physically appended to
4 the complaint. *Hal Roach Studios v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,
5 1555 n. 19 (9th Cir. 1990). This motion to dismiss for failure to state a cause of
6 action against the Giga Watt Bankruptcy Estate relies solely on the complaint and
7 its exhibits.

8 IV. ARGUMENT

9 A. Dismissal of the Action is Required Because the Court Lacks Subject 10 Matter Jurisdiction

11 1. *Under the Barton Doctrine, the Court Lacks Subject Matter* 12 *Jurisdiction Over the Claims Against the Trustee and Counsel*

13 The Barton Doctrine requires a party to “first obtain leave of the bankruptcy
14 court before it initiates an action in another forum against a bankruptcy trustee or
15 other officer appointed by the bankruptcy court for acts done in the officer’s
16 official capacity.” *Crown Vantage*, 421 F.3d at 970. *See Barton*, 104 U.S. at 127.
17 The Barton Doctrine applies broadly to court-appointed and court-approved
18 professionals. *See Catholic Bishop of Spokane v. Paine Hamblen, LLP*, No. 12-
19 CV-0583-TOR, 2013 WL 11319241, at *2 (E.D. Wash. May 15, 2013) (dismissing
20 lawsuit against debtor’s counsel for failure to obtain permission to sue from the
21 bankruptcy court as required by the Barton Doctrine); *Allard v. Weitman, (In re*
22 *DeLorean Motor Co.)*, 991 F.2d 1236, 1241 (6th Cir. 1993) (cited with approval

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1 by *Crown Vantage* and holding that the Barton Doctrine applies to counsel for the
2 trustee as “court appointed officers who represent the estate”). *See also In re*
3 *Balboa Improvements, Ltd.*, 99 B.R. 966, 969-70 (B.A.P. 9th Cir. 1989) (citing
4 authority that applies Barton, stating that “[j]urisdiction over a claim of
5 misconduct by the debtor’s attorney in the administration of an estate may be
6 analogized to the exclusive jurisdiction over similar claims against a court-
7 appointed trustee or debtor-in-possession” and holding that such state law claims
8 gave rise to “core” bankruptcy jurisdiction).

9 The limited statutory exception to the Barton doctrine, codified at 28 U.S.C.
10 § 959(a), is not applicable here. Section 959(a) provides that Trustees may be sued
11 without leave of the bankruptcy court “with respect to any of their acts or
12 transactions in carrying on business connected with such property.” 28 U.S.C. §
13 959. By its terms, section 959(a) does not apply to suits against trustees for
14 administering or liquidating the bankruptcy estate.

15 As alleged in the Complaint, the Trustee was not operating the business
16 previously conducted by the debtor. Instead, it converted to a Chapter 7 liquidation
17 case. (ECF No. 1 at 12:18-19, 13:1-2) The Trustee was liquidating the assets of the
18 estate, which included the estate’s claims against Perkins. Waldron Decl., ¶¶ 17,
19 18. Furthermore, Egan was acting “within the scope of her employment [by PLG]
20 while representing Defendant Waldron and the bankruptcy estate.” (ECF No. 1 at
21 11:6-9) This is precisely the type of activity that the *Barton* doctrine was designed
22 to protect. Thus, the limited exception to the *Barton* doctrine contained in 28

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1 U.S.C. § 959(a) does not apply. Instead, all of the Plaintiff's allegations pertain
2 directly to the Trustee's and Counsel's action in administering the estate,
3 specifically, litigating the estate's claims against Perkins and defending those
4 claims against Dam. Waldron Decl., ¶¶ 17-18; Egan Decl., ¶ 7.

5 Failure to obtain permission to sue the Trustee and Counsel outside the
6 Bankruptcy Court means that this Court lacks subject matter jurisdiction to hear
7 the dispute. *Crown Vantage*, 421 F.3d at 970-71.

8 As alleged in the Complaint, the Trustee and Counsel contested Dam's class
9 action against Perkins, obtained the Automatic Stay Order and injunction,
10 contested Dam's appeal of these orders, litigated against Perkins, negotiated the
11 Perkins settlement, and obtained approval of the Perkins settlement in their roles as
12 court-appointed Trustee and court-approved Counsel on behalf of the Giga Watt
13 estate. Waldron Decl., ¶ 18.

14 The Complaint does not allege – and cannot allege – that Dam obtained the
15 Bankruptcy Court's permission to commence this action. Waldron Decl., ¶ 19.

16 Therefore, under the Barton Doctrine, this Court lacks subject matter
17 jurisdiction over these claims.

18 **2. *The Court Lacks Subject Matter Jurisdiction Over the Perkins***
19 ***Settlement Proceeds Because They Are Property of the Estate***

20 The Complaint seeks disgorgement of the Perkins settlement proceeds that
21 Perkins paid to the estate pursuant to the Bankruptcy Court's final and
22 nonappealable Order approving the Perkins settlement. [citation] The Complaint

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1 alleges that the “retention of \$3 million by the bankruptcy estate is unjust”
2 (ECF No. 1 at 19:4) It also seeks imposition of a constructive trust over the “\$3
3 million settlement funds currently held by the bankruptcy estate.” (ECF No. 1 at
4 26:15-16) (Emphasis in original removed.)

5 “[T]he district court in which a case under title 11 is commenced or is
6 pending shall have exclusive jurisdiction -- (1) of all the property, wherever
7 located, of the debtor as of the commencement of such case, and of property of the
8 estate.” 28 U.S.C.A. § 1334. Furthermore, “[e]ach district court may provide that
9 any or all cases under title 11 and any or all proceedings arising under title 11 or
10 arising in or related to a case under title 11 shall be referred to the bankruptcy
11 judges for the district.” 28 U.S.C. § 157.

12 This Court has referred that jurisdiction to the Bankruptcy Court pursuant to
13 L.Civ.R. 83.5. Therefore, the Bankruptcy Court has exclusive jurisdiction over
14 property of the estate, including the Perkins settlement proceeds on which Dam
15 seeks to impose a constructive trust. *See In re Catholic Bishop of Spokane*, 329
16 B.R. 304, 315 (Bankr. E.D. Wash. 2005) (holding that the bankruptcy court’s
17 jurisdiction over property of the estate is exclusive), *aff’d in part sub nom.*
18 *Committee of Tort Litigants v. Catholic Diocese of Spokane*, No. CV-05-0274-
19 JLQ, 2006 WL 211792 (E.D. Wash. Jan. 24, 2006), and *rev’d in part on other*
20 *grounds sub nom. Committee of Tort Litigants v. Catholic Diocese of Spokane*, 364
21 B.R. 81 (E.D. Wash. 2006).

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1 Therefore, this Court lacks subject matter jurisdiction over these claims.
2 However, even if this were not the case – and it is the case – Dam would need the
3 Bankruptcy Court’s permission to sue the Trustee and Counsel to recover these
4 funds.

5 **3. This Court Lacks Subject Matter Jurisdiction to Grant Relief**
6 **From the Stay**

7 The Bankruptcy Court has exclusive jurisdiction over Dam’s request to lift
8 the stay imposed by 11 U.S.C. § 362. *See* 28 U.S.C. § 157(b)(2)(G) (providing that
9 actions to “terminate, annul, or modify” the automatic stay are core bankruptcy
10 proceedings); *Gruntz*, 202 F.3d at 1082 (“The automatic stay is an injunction
11 issuing from the authority of the bankruptcy court, and bankruptcy court orders are
12 not subject to collateral attack in other courts.”). *Accord In re Wardrobe*, No.
13 ADV. 04-05241, 2007 WL 7540982, at *4 (B.A.P. 9th Cir. July 31, 2007), *aff’d*,
14 559 F.3d 932 (9th Cir. 2009).

15 Therefore, this Court lacks subject matter jurisdiction to lift the automatic
16 stay.

17 **B. The Giga Watt Bankruptcy Estate Lacks the Capacity to Be Sued**

18 The Trustee is the representative of the Giga Watt estate vested by statute
19 with the capacity to sue and be sued. 11 U.S.C. § 323. *See Moneymaker v. CoBen*,
20 (*In re Eisen*), 31 F.3d 1447, 1451 (9th Cir. 1994) (“Under section 323 of the
21 Bankruptcy Code, a trustee is the representative of the debtor's estate and has the
22 capacity to sue and be sued.”); *In re Advanced Rods, Inc.*, No. ADV 04-6247, 2005

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1 WL 6960214, at *3 (B.A.P. 9th Cir. June 27, 2005) (“Bankruptcy estates are sued
2 by naming the trustee as the party-defendant in an official capacity.”). *Cf.* 28
3 U.S.C. § 1409(e) (“A proceeding arising under title 11 or arising in or related to a
4 case under title 11, based on a claim arising after the commencement of such case
5 from the operation of the business of the debtor, may be commenced *against the*
6 *representative of the estate*”). (Emphasis added.) *See Fox Hollow of Turlock*
7 *Owner’s Association v. Sinclair*, No. 1:03-CV-5439 AWI SAB., 2013 WL
8 1628260, at *4 (E.D. Cal. Apr. 15, 2013) (“[W]hen an entity lacks the capacity to
9 be sued, all claims against that entity should be dismissed.”).

10 **1. *The Complaint Does Not Make a Prima Facie Showing of***
11 ***Personal Jurisdiction Over the Giga Watt Bankruptcy Estate***

12 When a party does not have the capacity to be sued, a court lacks personal
13 jurisdiction over it. *See, e.g., Carroll Shelby Licensing*, 2015 WL 12765632, at *2-
14 3 (granting motion to dismiss under Fed.R Civ.P. 12(b)(2) because court lacked
15 personal jurisdiction over dissolved-corporation defendant that no longer had
16 capacity to be sued). *Accord Copeland*, 2024 WL 4797226, at *1, *report and*
17 *recommendation adopted*, No. CV 23-3536-AB (JPR), 2024 WL 4375737 (C.D.
18 Cal. Oct. 1, 2024).

19 The face of the complaint establishes that the named defendant, the “Giga
20 Watt Bankruptcy Estate,” refers to the estate in the Giga Watt bankruptcy case. For
21 example, it alleges, “the Giga Watt bankruptcy estate, represented by the Trustee,
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1 entered into a \$3 million settlement with Perkins Coie.” (ECF No. 1 at 14:2-4) It
2 refers to the estate being “managed” by the Trustee. (ECF No. 1 at 11:10-11)

3 Because the Giga Watt Bankruptcy Estate lacks the capacity to be sued, this
4 Court cannot obtain personal jurisdiction over it and the complaint against the
5 “Giga Watt Bankruptcy Estate” should be dismissed.

6 **2. The Complaint Fails to State a Plausible Claim Against the Giga**
7 **Watt Bankruptcy Estate**

8 A plausible claim cannot be asserted against the “Giga Watt Bankruptcy
9 Estate” because as a matter of law, only the Trustee can be sued on the Giga Watt
10 bankruptcy estate’s behalf. 11 U.S.C. § 323. Therefore, dismissal under Rule
11 12(b)(6) is appropriate.. *Mckesson*, 945 F.3d 818 (dismissing lawsuit under Rule
12 12(b)(6) against Black Lives Matter for lack of capacity to be sued), *cert. granted*,
13 *judgment vacated on other grounds*, 141 S. Ct. 48 (2020); *Grace Living Centers*,
14 2020 WL 130147, *1 (dismissing lawsuit under Rule 12(b)(6) against entity that
15 lacked capacity to be sued); *Coates v. Brazoria County Texas*, 894 F. Supp. 2d
16 966, 968–69 (S.D. Tex. 2012) (granting defendant’s Rule 12(b)(6) because the
17 defendant county lacked the capacity to be sued). Accordingly, the claims against
18 the “Giga Watt Bankruptcy Estate” must be dismissed pursuant to Rule 12(b)(6).

19 **C. Amendment Would Be Futile**

20 This action cannot proceed against the Trustee and Counsel, no matter how
21 the Complaint is framed, without the Bankruptcy Court’s permission. Similarly, no
22 amendment can evade the Bankruptcy Court’s exclusive jurisdiction over the

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1 Perkins settlements proceeds and whether to lift the automatic stay. Finally, no
2 matter how the Complaint is framed, the “Giga Watt Bankruptcy Estate” lacks
3 capacity to be sued. Therefore, amendment would be futile.

4 V. CONCLUSION

5 For the reasons set forth above, the Trustee and Counsel respectfully request
6 that the Court dismiss the Complaint against the Trustee and Counsel pursuant to
7 Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter
8 jurisdiction. The Barton Doctrine bars this action absent prior authorization from
9 the Bankruptcy Court, which the plaintiff did not obtain. Additionally, the
10 Complaint seeks to impose a constructive trust on property of the bankruptcy
11 estate and to lift the automatic stay, matters that fall squarely within the exclusive
12 jurisdiction of the Bankruptcy Court.

13 The Trustee and Counsel further request that the “Giga Watt Bankruptcy
14 Estate” be dismissed for lack of personal jurisdiction and failure to state a claim
15 pursuant to Rule 12(b)(2) and (6) for lack of capacity to be sued.

16 Amendment would be futile because the core jurisdictional and pleading
17 deficiencies cannot be cured.

18 *[This Motion continues on the next page.]*

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1 For these reasons, the Trustee and Counsel respectfully request that the
2 Court dismiss the Complaint without leave to amend and grant such other and
3 further relief as the Court deems equitable and just.

4 Dated: January 16, 2025

POTOMAC LAW GROUP, PLLC

6 By: /s/ Pamela M. Egan

Pamela M. Egan, WSBA # 54736

Attorneys for Trustee and Counsel

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CERTIFICATE OF SERVICE

I am over the age of 18 years old and am not a party to the above-captioned adversary proceeding. I certify that on January 17, 2025, I will serve the foregoing document through the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage in a sealed envelope addressed as follows:

Jun Dam
5432 Geary Boulevard, #535
San Francisco, CA 94121-2307

On January 16, 2025, I further served the foregoing document upon Jun Dam l by email addressed to Mr. Dam at jundam@hotmail.com.

Dated this 16th day of January 2025.

/s/ Pamela M. Egan
Pamela M. Egan

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CERTIFICATE OF SERVICE - i -